IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned On Briefs February 22, 2008

SHARON M. KEISLING v. DANIEL KERRY KEISLING

Direct Appeal from the Circuit Court for Wilson County
No. 1644 Jon Kerry Blackwood, Sr. Judge

No. M2007-01102-COA-R3-CV - Filed May 1, 2008

The trial court awarded a fee to the Guardian ad Litem in this matter and ordered appellant responsible for payment of the fee. Mother appeals contending that, due to misconduct of the GAL the fee should be forfeited. We affirm the trial court's award of the fee and, in the absence of a transcript or statement of the evidence, deem this to be a frivolous appeal.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; and Remanded

DAVID R. FARMER, J., delivered the opinion of the court, in which ALAN E. HIGHERS, P.J., W.S., and HOLLY M. KIRBY, J., joined.

Dan Richard Alexander, Nashville, Tennessee, for the appellant, Sharon M. Keisling.

Daniel K. Keisling, *Pro Se.*

Gloria Jean Evins, *Pro Se.*

MEMORANDUM OPINION[1]

This matter is now before the appellate courts for the third time. Sharon M. Keisling (Mother) and Daniel Kerry Keisling (Father) were divorced in 1998. Mother was granted custody of the parties three minor children and Father was granted liberal co-parenting time. In March 2000, Ms. Keisling filed a petition seeking, among other things, to modify Mr. Keisling's visitation due to allegations that he had sexually abused their children. His visitation was initially suspended, then

---

[1] **RULE 10. MEMORANDUM OPINION**

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

restricted. His regular unsupervised visitation was ultimately restored in March 2000 when the trial court concluded that he "did not sexually molest any of the parties' minor children."

In July of 2002, another post-divorce petition was filed by Mother asking the court to modify Father's visitation due to new allegations of sexual abuse. The trial court again found that Father did not sexually abuse any of the children and directed that custody of the three children be temporarily changed from Mother to Father. Our Supreme Court granted an interlocutory appeal pursuant to Rule 10 of the Tennessee Rules of Civil Procedure to determine whether the trial court erred in transferring child custody from one parent to the other when no petition requesting a change of custody had been filed at the time of the ruling. The Court concluded that the trial court erred in changing custody when the aggrieved party was not provided with notice that custody would be addressed at the hearing and the matter was remanded to the trial court. *See Keisling v. Keisling*, 92 S.W.3d 374 (Tenn. 2002). On December 30, 2002, the trial court entered an order naming Gloria Jean Evins, the appellee herein, as Guardian ad Litem (GAL) for the minor children.

On remand, the trial court held a status conference at which the trial judge recused herself. The Tennessee Supreme Court entered an order designating Senior Judge William H. Inman to replace Judge Byrd. On June 23, 2003, the trial court conducted a hearing on Father's amended petition to change custody, as well as the maternal grandparents' counterclaim for visitation in the event of a change of custody.

In rendering his decision, Judge Inman noted that Judge Byrd, on two occasions, conducted protracted hearings and found that Father had not committed the acts of which he was accused. The court found that the false accusations of sexual abuse constituted a material change of circumstances which required and justified a change of custody and found the change to be in the best interest of the children. Father's petition for a change of custody was granted and Mother was allowed the same visitation privileges that Father had previously enjoyed. The maternal grandparents' counterclaim for visitation was dismissed. The court also ordered that the parties were jointly responsible for paying the $15,000.00 in Guardian ad litem fees requested.

Mother and grandparents filed an objection to the fees of the GAL. They claimed that the GAL failed to perform her duties, that she charged an excessive hourly rate, and that the activities for which she charged were either clerical or were not related to the case. The trial court subsequently, prior to any response from the GAL, entered an order revising its prior decision and limiting the fees to $1,500.00. Mother, grandparents and the GAL all appealed to this Court. We affirmed the trial court with the respect to the designation of Father as primary residential parent and its decision as to grandparent visitation. The decision of the trial court regarding the GAL's fees was vacated and remanded for re-consideration. The opinion states as follows:

> From a review of the trial court's order and the comments at trial, it appears that its decision to reject the GAL's fee request was based on two findings: that the GAL's services as guardian ad litem were of no assistance, and that the GAL's services as counsel for the children were not compensable because the trial court had no authority to appoint counsel in a civil matter. The first reason is, of course, an appropriate factor to consider, since the trial court is in the best position to determine

> whether the GAL's services were of assistance tot he court. The latter observation, however, is erroneous, in that it ignores the specific language in Rule 17.03, which gives a trial court authority to appoint a guardian ad litem for a minor child and to award the guardian a reasonable fee for the services provided. Tenn. R. Civ. P. 17.03; *see also Brown v. Brown*, No. 02A01-9709-CV-00228, 1998 WL 760935, at *9 (Tenn. Ct. App. Nov. 2, 1998). Whether the GAL provided services as a guardian ad litem or an attorney ad litem, the services were compensable under Rule 17.03. In light of this, we must vacate this decision and remand to the trial court for reconsideration of the GAL's fee. On remand, the trial court should also consider the other factors set out in [*Connors v. Connors*, 594 S.W.2d 672, 677 (Tenn. 1980)] and in RPC 1.5, set out above, in making its ultimate determination. In light of this conclusion, we need not address Father's argument that Mother should pay the entire GAL fee. The trial court may address this issue on remand, if necessary.

Keisling v. Keisling, 196 S.W.3d 703, 731, (Tenn. Ct. App. 2005).

Senior Judge John Kerry Blackwood was designated to hear the case on remand. Following a hearing on October 24, 2006, Judge Blackwood entered a Memorandum and Order setting forth in detail the various factors he considered and awarded a fee in the amount of $7,500 assessed against Mother and maternal grandparents. Subsequent to that ruling, the grandparents, Francisco H. Guzman and Billie A. Guzman, filed a Rule 59 motion asking the court to amend the previous judgment in so far as it taxed the guardian ad litem fee to them. Mother also filed a motion requesting the court to review the entire record in setting the fees. In response to these motions, the court modified its previous ruling and assessed the $7,500.00 GAL fee solely against Mother. The court further noted that it had considered the entire record in assessing the amount of fees and declined to modify that portion of the ruling.

Mother appealed to this Court and sets forth five issues in the statement of issues in her brief. Her argument, however, is twofold.[2] Mother's argument on appeal is that the GAL's fee should be forfeited because of her misconduct in that she represented to the court that Father had never been indicated as a sexual perpetrator with respect to the minor children. She further states that it was later learned that the GAL had represented to the Board of Professional Responsibility that Father had been so indicated. The only reference in her brief to support this is a citation to a letter in the technical record. For reasons hereinafter discussed, we are unable to determine whether any evidence of these allegations were presented to the trial court. Mother next contends that the GAL was guilty of misconduct in that she submitted affidavits in support of her fees from "at least 2 and perhaps 3 from sitting judges." She correctly notes that Cannon 2B provides that a judge shall not lend the prestige of office to advance the private interest of the judge or others. As set forth in the preamble to the Code of Judicial Conduct, the code is intended to establish standards for ethical conduct of judges. Tenn. Sup. Ct. R. 10.

---

[2]Rule 27(a)(4) of the Tennessee Rules of Appellate Procedure provides that the brief of the appellant shall contain a statement of the issues presented for review. Rule 27(a)(7) provides that the brief shall contain an argument setting forth the contentions of the appellant with respect to the issues presented. We further note that appellant's brief states that her attorney on appeal "entered the case within the last eight (8) days to assist her in filing her brief."

Both parties agree that this Court's review is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d). The record before us contains neither a transcript nor a statement of the evidence of the proceedings in the trial court. In the absence of a record, we are unable to conduct a *de novo* review and must therefore conclude that the findings of the trial court are correct. *See Mfrs. Consol. Servs. v. Rodell*, 42 S.W.3d 865 (Tenn. Ct. App. 2000).

The Appellee requests that we deem this to be a frivolous appeal. A frivolous appeal is one that is devoid of merit, or one in which there is little prospect that an appeal can ever succeed. *Robinson v. Currey*, 153 S.W.3d 32, 42 (Tenn. Ct. App. 2004). An appeal is deemed frivolous when the appellant fails to provide an adequate record for the appellate court to review and that the appeal has no reasonable chance of succeeding. *Young v. Barrow*, 130 S.W.3d 59, 67 (Tenn. Ct. App. 2003). We deem this to be a frivolous appeal.

The judgment of the trial court awarding the Guardian ad Litem a fee of $7,500.00 is affirmed. We have determined this appeal to be frivolous and this case is remanded to the trial court to determine reasonable and appropriate attorney's fees. Costs of this appeal are taxed to the Appellant, Sharon M. Keisling, for which execution may issue if necessary.

_____

DAVID R. FARMER, JUDGE